

In the Supreme Court of the United States

No.

IN RE SEALED CASE

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

[redacted] respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-16a) is reported at 716 F.3d 603. The order of the district court denying petitioner's motion (App., *infra*, 19a-37a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 5, 2013. A petition for rehearing was denied on April 30, 2013 (App., *infra*, 17a-18a). On July 18, 2013, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including August 28, 2013, and on August 16, 2013, he further extended the time to and including September 27, 2013. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Staten v. Krime, 625 F.3d 558, 572 (3d Cir. 2010) (explaining that “*Perlman* and *Mohawk Industries* are not in tension[;] [w]hen assessing the jurisdictional basis for an interlocutory appeal, we have considered the *Perlman* rule and the *Cohen* collateral order exception separately, as distinct doctrines”). The opportunity to correct the court of appeals’ misreading of this Court’s decision in *Mohawk Industries* provides an additional reason to grant certiorari here.

In short, no other court of appeals of which petitioner is aware has read *DiBella* as the court of appeals does here, effectively to overrule the *Perlman* doctrine as applied to motions for return of property. And at least one other court of appeals has held to the contrary. That is not surprising, given that *DiBella* itself cited *Perlman* with approval. *DiBella*, 369 U.S. at 124 n.2. It would be surprising, by contrast, if *DiBella* had overruled that application of *Perlman* more than a half-century ago, and the court of appeals below were the first to notice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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